IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

ORDER

M/s. N.K.Enterprises Vs. Synthiko Organics Pvt. Ltd.
(SB Company Petition No.03/1995)

SB Company Petition under Sections 433 and 439 of the Companies Act,1956 for winding up of respondent company Synthico Organics Pvt. Ltd.

Date of Order: October 20, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. G.K.Garg, for the Official Liquidator.
Mr. R.C.Meena, Official Liquidator present in person.

BY THE COURT:

Since this winding up petition appears to have been filed as a means for realising debts due against the respondent company and the parties have entered into compromise, I proceed to decide this petition at this stage by invoking provisions contained in section 443 (1)(a) of the Companies Act,1956 (for short `the Act').

2. This petition was filed for winding up of Synthiko Organics Pvt. Ltd. (for short `the Company') by the creditor petitioner (for short `the Creditor') on January 27, 1995. According to the petitioner a sum of Rs.95,762/- was outstanding against the Company. This Court under section 450 of the Act appointed Official Liquidator provisionally. Thereafter the company moved an application duly supported by affidavit that since a

settlement arrived between the Creditor and the Company the petition be dismissed. Even after the counsel appearing for the Creditor pleaded no instruction in the matter on August 31, 2001 this court rejected the application of the Company on September 6, 2002 and directed the creditor to deposit with the Official Liquidator by account payee check or demand draft or pay order a sum of Rs.58,000/-.

3. I do not see any good reason to continue these proceedings. In my opinion the expression "unable to pay its debts" in section 433(e) of the Act should be taken in the commercial sense and that the machinery for winding up should not be allowed to be utilised merely as a means for realising debts due from a company.

4. Consequently the order dated September 6, 2002 is recalled and the petition seeking winding up of the company stands rejected. The amount if paid by the Creditor to the Official Liquidator shall be refunded to the Creditor within one month from today.

(Shiv Kumar Sharma)J.

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